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U.S. Cong. House.
Comm. on interstate
& Foreign commerce.

Railway consolidation
bill Report 1928.

70TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1264

RAILWAY CONSOLIDATION BILL

APRIL 13, 1928.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. PARKER, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 12620]

The Committee on Interstate and Foreign Commerce of the House of Representatives to whom was referred the bill (H. R. 12620) to authorize the unification of carriers engaged in interstate commerce, and for other purposes, having had the same under consideration, report favorably thereon without amendment and recommend that the bill do pass.

I. GENERAL DISCUSSION

NECESSITY FOR THE LEGISLATION

The policy of authorizing the unification of rail carriers and their properties if such unification is in the public interest has long been established. The provisions of existing law, however, under which it was contemplated that this policy should be carried out have proved impossible of administration; and the provisions of existing law which were contemplated to be of only temporary application, and which are admittedly inadequate, have been and are being resorted to. Practically everyone agrees that the policy is sound and that many of our present-day railroad problems can be relieved only through unifications properly authorized and carried out under sufficient safeguards. The time has come when the temporary provisions of the present law must be repealed and permanent provisions substituted therefor which are adequate to protect and promote the

interests of the public, which are reasonably certain and possible of administration, and under which the established policy can be carried out.

MAIN FEATURES OF THE BILL

Briefly, the primary purpose of the bill is to remedy the defects of the existing law in order that the established policy of permitting the voluntary unification of railroads and their properties may be carried out, but only if, in each case, the Interstate Commerce Commission has determined that the proposed unification will promote the public interest. The bill has two main features:

First, it affords greater and more effective protection to the public by prescribing the standards to be considered by the commission and by providing that only unifications which will effectively promote the public interest may be authorized; and

Second, it affords to the carriers more flexible methods for carrying into effect a proposed unification which has been approved by the commission.

OUR PRESENT RAILROAD PROBLEMS

The public must have adequate and efficient transportation service at the lowest rates consistent therewith. The public has the right to demand of Congress that it establish a system of regulation which will give each community served the transportation upon which its life, its growth, and its development depend. Private operation of our transportation agencies under public regulation should be the permanent policy of our Government. Our present system of regulation, however, must be made more effective if private operation is to meet the just demands of the public.

During the years 1923 to 1927, inclusive, the Interstate Commerce Commission authorized the abandonment of 3,052 miles of railroad engaged in interstate commerce. The abandonment of lines necessary to our transportation system should not be permitted. Communities have developed, homes and businesses have been established, and property has been acquired in reliance upon the continued operation of the transportation facilities afforded by such lines. Furthermore, the problems of weak lines can not be solved by authorizing abandonments. But weak roads can not long remain in existence, nor can they render the service to which their users are entitled, unless effective means are found by which their operation can be continued and their service improved. Additions and betterments must replace abandonments. Carriers must place themselves in a position which will invite the capital necessary to improve and promote the service they are rendering. Many weak roads have found it absolutely impossible to obtain the money necessary for capital expenditures. Even some so-called strong roads have been compelled to rely upon bond issues when a sound financial program demands the issuance of shares of capital stock.

Rates must be soundly made and adjusted. Carriers are entitled to charge rates which will yield them a reasonable return. The public, on the other hand, is entitled to the best service at the lowest rates compatible with that service. One rate, however, must be established for all carriers for a given service within a given territory.

That rate must be adequate to permit the weak lines to live, even though a stronger carrier, if considered alone, could be compelled to render the service at a much lower rate. But if it were permitted to charge a rate less than the rate necessary for the weak carrier, a result directly contrary to the one desired would obviously be produced, for the stronger carrier would be given substantially all the business. Artificial divisions of joint rates are not sound, and there are many cases where joint rates do not exist. The recapture clause is not proving as effective as it was hoped.

Substantial and effective competition between carriers must be assured. Although it is generally supposed that competition between carriers in rates does not and can not exist, it is believed that there still remain real opportunities for competition in rates. Competition in service, however, will undoubtedly bring about many necessary improvements. As a matter of fact, many of our shippers to-day and a substantial portion of the consuming public are vitally interested in expeditious and safe delivery as well as in rates. But competition, whether in rates or in service, can not be effective unless the competing carriers are strong and well balanced.

The excessive cost of inefficiency and inadequate equipment, reflected not only in the freight rates but also in the delays and hazards which shippers must take into consideration, must be eliminated. Even assuming that the elimination of inefficiency will not produce a saving substantial enough to be reflected in an extensive rate reduction, the continuance of the costs of inefficiency can not be justified economically, and the elimination of unnecessary hauls and duplications will undoubtedly produce substantial improvement in service.

THE POLICY OF AUTHORIZING UNIFICATIONS

Argument is not necessary to support the soundness of the policy of encouraging and authorizing the unification of railroads and their properties. This policy has been established by the Congress, has been repeatedly recommended by the President, has been indorsed by the Interstate Commerce Commission, and has been advocated by carriers, strong and weak alike, and by shippers. Transportation experts agree that the policy is sound.

During the entire period of many weeks which your committee has devoted to public hearings, with widespread and continued publicity, not a single witness appeared, or asked for an opportunity to appear, in opposition to the policy. It is not asserted that unifications will remove all the difficulties of to-day in providing and maintaining adequate railroad transportation service and in effectively regulating carriers engaged in such transportation. Unifications upon sound principles, however, will prove a very substantial step forward toward the solution of our present problems and undoubtedly present the only effective method by which many of our present railroad difficulties can be relieved.

There is nothing new in the policy which the bill advocates. Unifications are almost as old as our transportation system. Progressive development in the unification of railroads has been a continuous factor in railroad history. Practically all our great systems of to-day are the products of unifications. In the beginning the

impelling motive was the extension of roads into the large trade centers in order to increase the ability to handle the expanding traffic, to permit the continuous handling of traffic, and to avoid delays and expense in frequent transfers. Subsequently, however, the movement became actuated by a desire to combine competing systems and the stranglehold of monopoly was substituted as the goal to be gained. Rate agreements, pools, and traffic associations became common. The public and the Congress, however, were quick to recognize the change in the ends to be accomplished, and the Sherman Act and the Clayton Act properly restrained further unifications of this nature. In addition, unifications of parallel and competing lines were commonly prohibited by State laws and constitutions.

Prior to the World War, however, it was recognized that railroad unifications were desirable. Congressional committees were studying the problem, only to be interrupted by the war and war legislation. Following the war the study of the problem was renewed, with the result that the Congress adopted the policy of railroad consolidations which became law with the enactment of the transportation act of 1920. Certain provisions of that law have been found to be impossible of administration and have tended to defeat the very purpose of Congress.

PROTECTION OF PUBLIC INTEREST

Your committee has devoted considerable time to working out effective provisions under which the interests of the public will be fully protected. Your committee is certain that the results which may properly be achieved through unifications can be brought about without in the slightest degree offering any possible opportunity for a return to the era of consolidations for purposes of monopoly. Only unifications which will promote the public interest are authorized by the bill. Section 202(1) then provides that—

> * * * In determining the public interest the commission shall give due consideration to the maintenance of competition between carriers and the prevention of any undue lessening of existing competition, the preservation and improvement of the service afforded by the necessary weak or short lines, the promotion of economy, the affording of better service, the securing of a simplified and more effective regulation of carriers, the ultimate establishment of a number of strong and efficient systems well balanced within themselves and with other systems, and to such other factors as may be in the public interest.

Each of the above provisions will be discussed in detail hereinafter. It is sufficient to point out at this time that the Congress and the public may rest assured that the public interest has been uppermost in the minds of the committee. If the public interest will be promoted by a proposed unification, everything should be done to encourage the prompt carrying into effect of the unification plan. If, on the other hand, it does not promote the public interest, the unification should be specifically prohibited and no opportunity should be afforded the carriers for attempting a unification. The selfish interests of the carriers and the narrow perspective of State authority must give way to the paramount demands of the interests of the public as a whole.

THE EXISTING LAW

As heretofore explained, the existing law consists of two provisions, one intended to be only of temporary application and to authorize the acquisition of control not amounting to a consolidation, and the other intended to be of permanent application and to authorize consolidations.

The temporary provision is found in paragraph (2) of section 5 of the interstate commerce act. The permanent provision is found in paragraphs (4), (5), and (6) of section 5 of the interstate commerce act. Paragraph (8) of section 5 grants immunity from the antitrust laws in carrying out orders of the commission under either of the above two provisions.

THE DEFECTS OF EXISTING LAW

The more obvious defects of the present law, discussed in detail hereinafter, may be briefly outlined as follows:

(1) The interests of the public are not adequately safeguarded.

(2) The provision intended to be of permanent application can not become effective because of the fact that it requires the commission to prepare a complete plan for the consolidation of the railway properties in the continental United States into a limited number of systems before a consolidation can be approved, and the commission has found it impossible to comply with this requirement.

(3) The temporary provision of the existing law has been resorted to for unifications which should be effected only under adequate, permanent provisions.

(4) The existing law provides for only one type of unification, namely, a corporate consolidation.

(5) Adequate corporate power and definite corporate procedure are not prescribed.

(6) Unifications under State law are not prohibited.

(7) The present law prescribes conditions which can not be complied with for years, such as the requirement that the par value of the securities must not exceed the value of the consolidated properties as determined under section 19 (a).

(8) The rights and remedies of dissenting stockholders are not defined.

OUTLINE OF THE BILL

Briefly, the bill accomplishes the following:

(1) It authorizes railroad unifications which will promote the public interest and lays down very definite and specific standards to be considered by the Interstate Commerce Commission in determining whether or not a proposed unification will in fact promote the public interest.

(2) It removes the defects of the present law which have combined to prevent the promotion of the policy of voluntary unifications.

(3) It repeals the provisions of existing law under which so-called mergers have been attempted (although none has actually been authorized), and which have been subjected to considerable criticism.

(4) It grants to carriers all the power necessary to carry into effect a unification which will promote the public interest and which

has been approved by the Interstate Commerce Commission, and removes existing barriers of Federal and State laws which otherwise would prevent the carrying into effect of the congressional policy.

(5) It affords adequate protection to dissenting stockholders who are not in accord with the will of the majority and who wish to withdraw from the enterprise.

(6) It relieves the commission of the tremendous and probably impossible task imposed upon it of preparing a complete and comprehensive plan for the unification into a limited number of systems of all the railway properties within the continental United States.

(7) It prohibits all unifications except those proposed and carried out in accordance with the act, including consolidations, mergers, acquisitions of properties, and acquisitions of voting securities.

II. DETAILED ANALYSIS OF THE BILL

STRUCTURE OF THE BILL

The bill proposes to add a new title to the interstate commerce act. The mechanical structure of the bill is designed to keep the laws relating to carriers in one place and also to make the provisions of existing law relating to the procedure of the commission applicable to the provisions of the bill.

DEFINITIONS

Section 201 contains definitions of some of the terms used in the bill.

Section 201(1) defines the term "interstate or foreign commerce" in the usual manner. The definition does not change existing law, but is used in order to prevent repetition.

Section 201(2) defines the term "carrier." Inasmuch as this term is used throughout the act, the definition is of considerable importance. As a result of the definition the provisions of the bill will apply to a common carrier engaged in the transportation in interstate or foreign commerce of passengers or property wholly by railroad or partly by railroad and partly by water, within the continental United States, if the carrier is subject to the present interstate commerce act. This definition is based upon the provisions of section 1(1)(a) of the interstate commerce act. Consequently, a carrier is included within the definition if it is engaged in transportation by railroad, even though also engaged in other transportation, for example, by motor bus.

By reason of the fact that certain railroad companies have leased all their properties and consequently are not actually engaged in transportation, and by reason of the fact that many terminal companies, although not engaged in transportation, own terminal facilities, such as passenger and freight depots, yards, and grounds, which should properly be subject to the provisions authorizing the unification of carrier properties, such companies are included within the definition. A terminal corporation is one which owns properties to supply terminal facilities for one or more railroad companies, usually operating such properties either in whole or in part, under operating agreements with the railroad companies; and, consequently, companies, such as packing, mining, warehouse, lumber, and elevator companies, etc., which own terminal properties merely as an incident to the carrying on of their other business, are not included within the definition and, therefore, are not subject to the provisions of the bill. In order to permit the organization of a new corporation, the definition includes such a corporation, if it is organized to effect a unification and also for the purpose of engaging in transportation as a carrier. It will be noted that sleeping-car and express companies are excluded from the provisions of the bill.

Section 201(3) contains an all-inclusive definition of securities.

Section 201(4) defines the term "voting securities" to mean all outstanding securities, whether shares of stock, bonds, certificates, notes, or other evidences of interest or indebtedness, issued by a carrier, if such securities have voting privileges. Unissued stock and stock acquired by the issuing carrier and held in its treasury, of course, are excluded, as well as all securities, such as preferred stock, in respect to which no privilege of voting has been conferred. In other words, your committee felt that all securities having voting privileges with respect to any question involved in a proposed unification should continue to have the voting privilege under the bill, but that no greater voting privilege should be conferred.

PROTECTION OF THE PUBLIC INTEREST

Section 202(1) authorizes a unification of carriers or of property of carriers, but only if the Interstate Commerce Commission is of opinion that the unification will promote the public interest. This paragraph requires the commission to give due consideration, among other matters, to the maintenance of competition between carriers and the prevention of any undue lessening of existing competition, the preservation and improvement of the service afforded by the necessary weak or short lines, the promotion of economy, the affording of better service, the securing of a simplified and more effective regulation of carriers, and the ultimate establishment of a number of strong and efficient systems well balanced within themselves and with other systems.

The paragraph does not require the commission to find that each of the above will result from a proposed unification. It is intended rather to give to the commission an indication of what the Congress expects will result in the future from unifications. For example, it is conceivable that a proposed unification may not produce economies, and certainly the immediate establishment of all the strong and efficient systems ultimately to be created is not expected. Nevertheless, the unification, if otherwise proper, may be approved by the commission. Furthermore, the paragraph merely requires that the commission shall give due consideration to the above factors. It does not mean that greater consideration should be given to any one of them than to any of the others. It means that a sound balancing of all the factors involved in any proposed unification will result in the opinion that the unification will promote the public interest.

It will also be observed that the paragraph does not require a specific finding as to the actual existence of any of the factors. In-

asmuch as the commission will have to make a forecast of the consequences to result from the proposed unification based upon all the information and facts available, and inasmuch as the commission will be expected to use a sound discretion in making its determination under this paragraph, it will be exercising a legislative, rather than a judicial, function and will be acting as an agency of the Congress.

It may be well to point out again that unifications are not to be authorized merely to satisfy the desire of human nature to attain gigantic size or to obtain control. On the contrary, unifications are to be authorized only when the public will not be deprived of any of the advantages which it now possesses (at least unless a satisfactory substitute is provided), and when it will be assured that favorable consequences will result from the unification. Every effort has been made to protect the public interest and to make it the paramount test. If the Interstate Commerce Commission is not satisfied that a proposed unification will really promote the public interest, the plan should be disapproved.

Maintenance of competition.—The paragraph requires the commission to give due consideration to the maintenance of competition between carriers. It will be observed that this does not require the maintenance of existing competition, but merely that there must be competition after a unification if there is competition before the unification. It is obvious that competition between two strong carriers after a unification will prove much more effective than any existing competition between a strong and a weak carrier. Consequently, the public interest will be materially promoted if, in such case, the existing competition is replaced by effective competition between carriers of substantially the same strength.

Undue lessening of existing competition.—Due consideration must also be given to the prevention of any undue lessening of existing competition. This provision does not mean that there can be no lessening of existing competition, and, obviously, the substitution of effective and substantial competition described above could not be accomplished without some elimination of the existing competition between the strong and the weak carriers. It is only undue lessening that the commission must prevent. If the public interest unquestionably requires the lessening of existing competition, it is obvious that such lessening will not be "undue." Again, the primary purpose of competition among railroads is to promote efficiency, economy, and better service. Competition which requires duplication and increases costs has a contrary effect and may well be eliminated.

The real advantages to the public of substantial competition, it is believed, can be gained only through unification resulting in competitive systems of approximately equivalent earning power, financial strength, and efficiency. Such a result would in itself amply justify the enactment of the bill.

Preservation of weak or short lines.—The paragraph requires the commission to give due consideration also to the preservation and improvement of the service afforded by the necessary weak or short lines. The weak-line problem is undoubtedly one of the most serious problems now confronting us. A large percentage of the lines now owned by weak roads must continue to be operated. As stated above,

continued abandonments will produce disastrous results to the communities which have developed in reliance upon the continued operation of the line. Although it is not expected that unifications will entirely remove the weak-line problem, it is certain that we may expect a very substantial percentage of the weak lines to become parts of strong and efficient systems.

The promotion of economy.—There is, admittedly, much difference of opinion as to the substantial effect of the economies to be realized. It is undoubtedly true that many of the savings in overhead expenses will be counterbalanced, to some extent at least, by increased expenses, for example, in the case where a weak line, now operated with a minimum of expense, becomes a part of a system. It is also true that overhead expenditures constitute but a small percentage of railroad expenses. The testimony before the committee is convincing, however, that real economies will come from unifications. Large systems can make more economical use of their equipment, for a small road does not have sufficient traffic or sufficiently diversified traffic to make the most efficient use of all the equipment required to handle peak loads and of the different types of cars required to handle different commodities. There will be more direct routing and less back hauling of freight. Direct lines will be available for commodities demanding a fast service. The cost of switching will be reduced to a minimum. Methods and equipment and practices may be standardized. A substantial and forceful purchasing power will be concentrated in one agency. Shops and equipment will be utilized to the maximum extent.

In this connection it may be pointed out that it has been alleged, and considerable testimony has been introduced tending to prove, that in one of the proposed mergers now pending there will result an aggregate saving through economies of $10,000,000 a year. It may well be that the distribution of this amount among all the shippers in the territory served may of itself not appreciably be felt in rate reductions. Even assuming that no reduction by reason of the saving should be forthcoming, the saving of this amount and the improvement of the service resulting therefrom would prove very substantial and worth while.

Better service.—The strengthening of credit facilities and the economies effected will permit additions and betterments, better equipment, and improved roadbeds. A system will be in a position to make direct and fast shipments. A sufficient number of cars of the proper type will be available to meet the demand. It will be able to give regular, adequate, and satisfactory service. Each system will connect directly with another system. The operation of solid trains to and from large centers and important gateways will be facilitated. The operation of terminals at large centers will be simplified. The number of junction points will be reduced to a minimum. A simplified movement of freight or passenger traffic will result in a minimum number of transfers and the maximum operation of through trains. Uniform service can be afforded throughout the year, for even though there should be a crop failure in part of the territory served by the system, for example, conditions might well be normal in other parts of its territory.

A simplified and more effective regulation.—A reduced number of carriers will greatly simplify the duties of the Interstate Commerce Commission and also the duties of the carriers in handling matters before the commission. Our present railroad tracks and facilities are owned by about 1,900 and are operated by about 1,000 separate railway companies. Each of these companies has its own individual problems before the Interstate Commerce Commission and the commission must consider each of them.

A more effective regulation of carriers is one of the most important results to be expected from unifications. No system of rate making can be based upon the condition or position of an individual railroad. It must be based upon the condition and position of the railroads as a whole within a given territory. But each railroad should obtain similar financial and operating results. Similar results, however, can be obtained only if the railroads themselves are similar in character. So long as the units of our transportation system are so greatly lacking in uniformity as at present, it is obvious that uniform results can not be obtained.

Unification offers the only means other than Government ownership by which railroad units of a substantially uniform character may be created. Public regulation under present conditions is extraordinarily difficult, and its complexities are constantly increasing. If we are unable to make it more effective, efficient, and fair, public regulation may fail. And if it fails, the continuation of private ownership will become impossible.

The ultimate establishment of systems.—The ultimate goal of unifications is the establishment of a limited number of systems which will be able to render, and to continue to render, to the public the service demanded at rates which are reasonable to the public and which will yield to the carriers a fair return upon the value of their railway properties. It is not expected that the immediate establishment of the systems contemplated is possible. Years will undoubtedly elapse, during which unifications will be effected from time to time, before the ultimate goal is reached. The commission must, however, keep the ultimate end in mind and must consider whether any proposed unification will tend to bring about the ultimate establishment of a strong and efficient system.

A carrier which is "strong" is in a position to obtain the necessary funds for additions and betterments and equipment at the lowest possible cost. An efficient system is one neither so large as to be unwieldly or unmanageable, nor too small to secure economies derived from large scale operations; one that can make the best possible use of its rolling stock, yards, and terminals, so as to avoid the congestion of transportation on the one hand and idle facilities on the other; one that will be in a position to meet the transportation demands made upon it at the lowest possible costs. A well-balanced system is one that has a reasonable opportunity to originate well-diversified and dependable traffic which assures a continuity of revenue, so that the depression in a single industry will not too greatly affect its total traffic; one which will have facilities, equipment, tracks, yards, and terminals adequate to the public needs. A system well balanced with other systems is one which will become competitively important in freight transfer and delivery, which will be able to give service

comparable to that afforded by competitors, and which will be able to hold its own with other systems serving the same territory.

Other factors in the public interest.—The Interstate Commerce Commission, in passing upon an application under paragraph (2) of section 5, has given consideration to practically all the factors enumerated in section 202 (1), in determining the public interest. The commission has also considered factors in addition to those specifically mentioned, which it will also consider under the provision in the section that it give due consideration to "such other factors as may be in public interest." One of the very important factors which it has considered in the past and will consider under this provision is the financial set-up of the proposed unification, involving such things as the amount of bonds and stock, the issuance of no-par value stock, the amount of stock having voting privileges, the size of the corporation controlling the carriers involved in the unification, etc. (See Nickel Plate Unification, 105 I. C. C. 425, 444–445; Unification of Southwestern Lines, 124 I. C. C. 401, 437–439.) The purpose of this general provision is to make it possible for the commission to consider, among other things, all the factors controlling an interpretation as to public interest under paragraph (2) of section 5 which are not specifically enumerated in section 202. A second important consideration is the fairness of the terms from the point of view of the stockholders. (See Nickel Plate Unification, supra, pp. 445–448.)

NEW LAW IS EXCLUSIVE

It is uncertain whether the present law constitutes the exclusive method by which unifications may be effected. Except for the question of the possible violation of the antitrust laws, the better view seems to be that unifications may be effected under authority of State law. In any event your committee is convinced that there should be but one law authorizing unifications and that that law should be a Federal statute. Consequently, the bill provides, in section 202 (2), as to the future, that no consolidation, merger, or acquisition of voting securities may be effected except in accordance with the provisions of the new bill. It should be pointed out that the committee has specifically decided to make this provision only of future application. The validity of acts done in the past must be determined under the law applicable thereto, wholly without regard to the provisions of the new bill.

It will be observed that the prohibition does not affect the provisions of paragraphs (18), (19), and (20) of section 1 (relating to extensions of line), the provisions of paragraph (4) of section 3 (relating to joint use of terminals), the provisions of paragraph (2) of section 5 (authorizing acquisitions of control), the provisions of paragraph (15) of section 1 (relating to car service and use of terminals), or the provisions of section 20a (relating to security issues), of the interstate commerce act, whether the order of the commission under any of these provisions is entered before or after the new bill becomes law. Neither does the prohibition interfere with the formation of subsidiary corporations, and the acquisition of all or any part of the securities thereof, for the construction, operation, and ownership of branches, extensions, or terminals, or equipment or facilities to be used in connection therewith. This provision is of the utmost impor-

tance in order to care for present practices, established primarily because of the existence in mortgages of an "after acquired property" clause. The exemption, however, is limited to cases of proposed construction, operation, and ownership. It does not apply to acquisition through purchase or lease, for example, for the committee believed that purchases or leases should be effected under the provisions of the bill.

TYPES OF UNIFICATION AUTHORIZED

Section 203 (1) provides that in order to bring about a unification two or more carriers may agree on a plan therefor to be carried out under authority of the bill.

Paragraph (2) of this section enumerates the types of unification which may be included in the plan. The first of these, described in subdivision (a), is an acquisition by or transfer to a carrier of all or a part, or of the right to operate all or a part, of the properties or franchises of one or more carriers. This acquisition or transfer may be by purchase, sale, exchange, lease, or otherwise, and includes all transactions by which the ownership or possession of properties or the right to operate properties may be transferred from one carrier to another without change in the corporate organization of either of the carriers. Of course, a carrier corporation, after disposing of all its properties, may dissolve, but such dissolution is not contemplated as a part of a plan under this subdivision. It is further provided that, if desired, any remaining assets of any carrier may be disposed of. No corporate merger or consolidation is here contemplated.

Subdivision (b) provides that the plan may include a corporate merger of one or more carriers into another. The term "merger" is here used in a strict, legal sense and is intended to include only a transaction whereby the properties, franchises, and other assets of one or more carriers are taken over or absorbed by another carrier, accompanied by the termination of each merging carrier and the continuation of the acquiring or continuing carrier without any change in, or interruption of, its corporate existence. The effect of such merger upon the title to the property, and upon the rights, privileges, powers, immunities, exemptions, and franchises of each of the corporations, and upon their debts, liabilities and duties, is specifically set forth in section 211 hereinafter discussed.

By the terms of subdivision (c) of section 203 (2) a corporate consolidation of two or more carriers may be included in the plan, but only if such consolidation is to be effected under State law. Again, the term "consolidation" is used in a strict sense to describe the type of corporate combination wherein the properties, franchises, and other assets of two or more carriers are united and passed to a new corporation, the consolidated corporation, whereupon the corporate existence of each of the constituent companies is terminated, and, generally, the stockholders of the constituent corporations become the stockholders of the consolidated corporation. A unification of this character requires the creation of a new corporation, and can be effected only under statutory authority. The corporation laws of most of the States contain provisions for this form of combination. Usually, the same provision which authorizes the consolidation creates the new consolidated corporation. The procedure prescribed

ordinarily requires a joint agreement setting forth details of the organization of the new company, to be submitted for approval to the stockholders of each constituent company, and, when duly filed with the proper State officer, constituting the charter of the new corporation. It is not desirable to have in the bill any provision which might be construed as creating a corporation under Federal law. It is hardly within the power of Congress to provide for the creation of a new corporation under the laws of any of the States. Therefore, it seems desirable that a combination of this type be carried out under the laws of the State or States creating the corporations involved.

Finally, by the terms of subdivision (d) of this paragraph, the plan may provide for the acquisition by a carrier of securities of another carrier (whether or not one of the petitioning carriers) by purchase, exchange, lease, or otherwise, or the approval by the commission of an acquisition of securities of class two or class three carriers under the provisions of paragraph (2) of section 205, hereinafter referred to.

CONSOLIDATION AND MERGER DISTINGUISHED

The term "consolidation" is frequently used in statutes and judicial decisions, in a loose sense, to include corporate combinations which result in either (1) the creation of a new corporation and the dissolution or extinction of all of the combining corporations, or (2) the continued and enlarged existence of one of the corporations and the dissolution or practical extinction of the others. Thus, in the case of Central Railroad & Banking Co. *v.* Georgia (1875), 92 U. S. 665, the Supreme Court held that a statute providing for "consolidation" did not necessarily work a dissolution of both companies and the creation of a new one. Usually, however, when the questions involved in a case make it important to determine whether, under a particular statute, the combining corporations have all been extinguished and a new corporation created, it is found that the courts apply the term "consolidation" to such a combination, and distinguish as a "merger" the case where one of the combining corporations continues to exist and absorbs into it the properties, franchises, and other assets of the others, which thereupon go out of existence. So, in the case of Atlantic & Gulf Railroad Co. *v.* Georgia (1878), 98 U. S. 359, the Supreme Court, in holding a combination to be a strict consolidation, said:

> The consolidation provided for was clearly not a merger of one into the other, as was the case of Central Railroad & Banking Co. *v.* Georgia. * * * That generally the effect of consolidation, as distinguished from a union by merger of one company into another, is to work a dissolution of the companies consolidating, and to create a new corporation out of the elements of the former, is asserted in many cases, and it seems to be a necessary result.

A more recent Federal case pointing out the distinction is Lee *v.* Atlantic Coast Line R. Co. (1906), 150 Fed. 775. (See, also, a valuable note on consolidation in 89 Am. St. Rep., at page 604, and cases there cited.) It may be said that the later and better considered authorities limit the term "consolidation" to combinations of two or more companies creating a new corporation and extinguishing the old ones, as distinguished from a merger by one company absorbing another without the creation of a new corporation. It is in this sense that the terms are used in the bill.

JOINT AGREEMENT AND PETITION

Section 204 provides the machinery by which two or more carriers which propose a unification may present to the commission the plan of unification that has been agreed upon.

Section 204 (1) provides that if the boards of directors of two or more carriers have authorized a joint agreement proposing the plan of unification and this agreement has been executed by the carriers, they may then petition the commission for its approval of the proposed plan. The commission may by regulations prescribe the details to be included and may by special order require the carriers to include in the petition details of the plan in addition to those included by the carriers. Such petition or plan may be amended at any time by leave of the commission.

Section 204 (2) provides for the contents of the joint agreement. This includes the terms and conditions of the plan and the methods by which it is to be effected. There is also to be a statement of the proposed financial set-up, and of the securities involved in carrying out the plan, together with the terms on which such securities are to be issued, and a statement of the rights, privileges, powers, and immunities granted or denied under the plan to different classes of stockholders. Finally, the joint agreement may contain such other provisions and details as the boards of directors may deem necessary or appropriate or as the commission may require.

Section 204 (3) provides the manner in which a joint agreement may be authorized by the board of directors.

Section 204 (4) requires that a duly executed copy of the joint agreement be filed with the commission as a part of the petition.

ACQUISITION OF SECURITIES BY A CARRIER

Section 205 authorizes a carrier to petition the commission for the approval of a plan to be effected by an acquisition of securities of another carrier, and authorizes the acquisition of securities issued by a class two or a class three carrier upon the condition that the securities can not be voted until the acquisition has been approved by the commission.

Section 205 (1) authorizes a carrier which proposes to bring about a unification through the acquisition of securities of another carrier to submit to the commission a plan which has been adopted by a majority of the directors of the petitioning carrier. The petition must include the plan and the terms, methods, and purpose of the proposed acquisition, and the issue of any new securities that may be involved in the plan, in such detail as the commission may require. This paragraph is intended to apply primarily to the case of a carrier classified by the commission as a class one carrier, and it sets up the only method by which, after the date of the enactment of the bill, the voting securities of any such carrier may be acquired by another carrier (except as to applications pending under paragraph (2) of section 5). If any such acquisition is attempted by any other method it will be unlawful and will fall within the prohibition of section 202 (2).

Section 205 (2) authorizes any carrier to petition the commission for the approval of an acquisition of securities of a class two or a class three carrier if the acquisition has been authorized by the vote of a majority of the directors of the acquiring carrier. No restriction is imposed upon the act of acquiring such securities, but the privilege of voting in respect to such securities is to be withheld until such time as the commission, upon petition of the acquiring carrier, has granted its approval to the acquisition. If the commission refuses to approve the acquisition, then it may require the carrier which has obtained the securities to sell or otherwise dispose of them.

PROCEDURE OF THE INTERSTATE COMMERCE COMMISSION

Section 206 of the bill prescribes the notice to be given and provides for a public hearing upon a petition. Here again the interests of the public are protected by requiring notice to be given to the governor of each State in which any part of the line of any carrier a party to the plan is located, and to the railroad commission, public service or utilities commission, or other regulatory agency of the State, and by giving a specific right to the governor or the commission, or other representative, to be heard. The section also gives any person having an interest in the proposed unification an opportunity to be heard before the commission, so that organizations of shippers, chambers of commerce, and other community organizations, and the stockholders, or bondholders and other creditors, of the carriers involved may be heard. In order that the hearings may not be unnecessarily prolonged, and in order that the right to cross-examine witnesses may be kept within reasonable limits, the right of persons having an interest in the proposed unification to be heard is subject to rules to be prescribed by the commission.

Section 20a and paragraphs (18), (19), and (20) of section 1 of the interstate commerce act require similar notice to the governors of the States. In order to avoid duplication of hearings, section 206 (2) authorizes action under the above provisions in any proceeding upon a unification under the new bill. The nature and effect of the action, however, is governed by the provisions just referred to.

Primarily for the purpose of giving weak or short lines an opportunity to become parties to any proposed unification, section 206 (3) permits the filing with the commission of an intervener's petition. In order that the filing of a petition may not unduly interrupt the proceedings, it is provided that the intervener's petition must be filed prior to or at the time the original petition is called for hearing, unless the commission grants a request after such time upon a showing of good cause for a failure to file theretofore. In any such case, of course, the commission permits the filing of the petition upon such conditions as have been prescribed, such as requiring the intervener to accept the record of the commission previously made.

The provisions of existing law, or of any future amendment thereto, relating to the procedure of the commission, are applicable to its procedure under the provisions of the new bill. (See sec. 12 and sec. 17 of the interstate commerce act.)

ORDER OF THE COMMISSION

Section 207 (1) of the bill provides that if, after the hearing, the commission is of opinion that the proposed unification will promote the public interest and finds that those provisions of the bill which

are conditions precedent to the entry of the order have been complied with, the commission shall enter an order approving the plan or (in the case of a petition seeking the approval of the commission of an acquisition of securities issued by a class two or a class three carrier, effected under section 205 (2) of the bill) the acquisition of securities. It is again pointed out that the paragraph does not require a finding by the commission upon the public interest but merely requires that the commission be of the opinion that the proposed unification will promote the public interest. (Compare the Chicago Junction Case (1924), 264 U. S. 258.) The determination of the public interest must be made, of course, in accordance with the provisions of section 202.

The conditions precedent to the entry of the order are, briefly, in the case of a plan presented under section 204, that a plan has been agreed upon, that the plan provides for one of the various methods of unification, that a joint agreement has been entered into proposing the plan duly authorized by the boards of directors and executed by the carriers, and that the joint agreement contains the provisions required; and, in the case of a petition under section 205 for the approval of a plan for unification through the acquisition of securities, or for the approval of an acquisition theretofore made of securities issued by a class 2 or class 3 carrier, that the petition is properly presented, and that the plan or acquisition has been duly adopted or authorized by the board of directors; and, finally, that in all cases the requisite notice has been given and the public hearing held at which the parties or persons have been afforded a reasonable opportunity to be heard.

The approval of the commission may be made upon such terms and conditions as it may prescribe in the public interest. If the commission finds, upon objection of a stockholder, bondholder, or holder of any other security issued by a carrier a party to the plan, who has appeared before the commission, that the terms and conditions of the plan are unfair or unreasonable as to him, whether by reason of the fact that the compensation offered him in the case of an exchange of securities, for example, is inadequate or is less than the "just compensation" to which he is entitled, or by reason of the fact that he has been discriminated against and that other holders are given more favorable terms than those offered him, then the commission is authorized to approve the plan upon such terms and conditions as it finds to be fair and reasonable.

Section 207 (2) deals with the situation where a carrier not joining in the original petition is to be made a party to the plan, either upon its petition or upon the initiative of the commission. In order that the unification may be entirely voluntary, the paragraph provides that the original petitioners may report back to the commission and obtain a revocation or modification of the condition, if the new carrier is insisting upon unreasonable terms; or, if the new carrier so requests, the commission may prescribe the terms upon which it may be made a party to the proposed unification if the carriers elect to carry out the plan.

Section 207 (3) is another provision intended to protect the interests of weak and of short carriers, and requires that the carriers and the commission shall give due consideration to the inclusion in the plan of short and of weak carriers in the territory involved.

ISSUANCE OF SECURITIES

Section 207 (4) makes it certain that the provisions of section 20a will be applicable to the issuance of securities in connection with a unification. Section 5 (6) (b) of the present law imposes a condition which would, if carried into the new bill, practically prevent unifications, as it provides that the par value of the outstanding stock and bonds must not exceed the value of the consolidated properties as determined by the commission.

The director of finance of the Interstate Commerce Commission, Mr. Mahaffie, discussed the matter thoroughly and in detail in the executive sessions of the committee. Since the enactment of the transportation act of 1920, containing the provisions of section 20a, giving complete jurisdiction to the Interstate Commerce Commission over the issue of securities, there has been no overcapitalization, and the commission has been gradually "squeezing out the water" accumulated prior to that time. Your committee feels that section 20a has been ably administered, is proving very effective, and that no additional safeguards are necessary, except the imposition of one condition, namely, that there should be no capitalization of intangible values resulting from the proposed unification. Although the commission has consistently refused in the past to permit an issuance of securities based upon a capitalization of intangible values, your committee feels that any possibility of a reversal of this practice should be specifically prevented.

CONSENT OF CARRIERS

After the order of the commission has been entered, section 208 requires that the carriers must consent to the order before it becomes effective. This obviously is in line with the policy that unifications should be voluntary. In the case of an order authorizing or approving an acquisition of securities, whether under section 205 or under section 203 (2) (d), the consent of the carriers is given by the boards of directors. If the plan provides for unification through any of the other methods (whether or not the acquisition of securities is involved) the holders of the voting securities, as well as the boards of directors, must consent to the order in so far as it involves a unification by such other methods. A favorable vote of a majority of the board of directors of each carrier and a majority of the holders of voting securities is sufficient to grant the consent.

Section 208 (3) requires that, if the consent of the holders of the voting securities is required, such consent must be given at a special meeting. Notwithstanding the fact that voting bondholders, for example, are included, the paragraph provides that the special meeting is to be called and held and conducted in the manner prescribed for a special meeting of stockholders. The right to vote is not fixed in the bill but will be determined under the provisions of the State law, the articles of incorporation, the by-laws, the terms of the bond, etc. For example, if a mortgage provides that the bondholders, or any specified percentage of them, must consent to a disposition of a substantial portion of the assets of the corporation, such bondholders will have the right to vote upon so much of the plan as relates

to the disposition of assets, or, if the plan includes such a disposition and no separate vote is taken on that portion of the plan, then upon the plan as a whole.

The method by which their vote is cast will be governed without regard to the provisions of the bill, in the same manner as though the specific question were presented in the ordinary course of business at a special stockholders' meeting. The bill in this respect differs materially from prior bills upon the subject.

Section 208 (4) requires the certification of the consent of the carriers, in order that the commission may be duly advised upon the action taken. This paragraph also provides that the certification shall be prima facie evidence of the facts certified. It is pointed out, however, that in section 210 (3) the certification by the commission, following the certification as to the consent of the carriers, is conclusive evidence that the applicable provisions which are conditions precedent have been complied with.

EFFECTIVE DATE OF COMMISSION'S ORDER

Section 209 provides that the order of the commission shall become effective upon the expiration of 30 days from the date on which the commission certifies that the carriers have consented, except to the extent that the order is suspended or set aside by a court of competent jurisdiction upon suit begun prior to the expiration of the 30-day period. Because of the tremendous importance attached to an order of the commission it is imperative that once an order of the commission has become effective there be no method by which the order itself can be invalidated. Consequently it is provided that any suit for an injunction must be instituted prior to the 30-day period. The jurisdiction of the courts over such a suit is fixed by the provisions of the urgent deficiency appropriation act of October 22, 1913, commonly known as the district court jurisdiction act. Wide publicity will be given to the proceedings of the commission upon a proposed unification and ample opportunity to appear before the commission will be afforded. Accordingly, the 30-day period is clearly adequate.

EFFECT OF COMMISSION'S ORDER

Section 210 (1) is a grant of Federal power to each carrier designated in the order of the commission to do anything necessary or appropriate to carry into effect the plan as approved. Although this power will be derived from a Federal law, it does not mean that the carrier becomes a Federal corporation, nor does it mean that the carrier is an instrumentality of the United States.

If the plan has provided for a consolidation (and the provisions requiring that the plan can provide only for a consolidation to be effected under State law have been previously explained), it will be observed that no corporate power to carry out the consolidation will, in legal effect, be derived from this paragraph. If no power exists to consolidate under the State law, the commission can not approve. If power does exist, then the commission's order will merely authorize the carriers to proceed with the consolidation in accordance with State law.

Section 210 (2) grants immunity from the antitrust laws of the United States; from the provisions of paragraph (12) of section 20a prohibiting interlocking directorates; from any other Federal restraints or prohibitions; and (except in the case of a corporate consolidation) from all restraints or prohibitions of State law or any decision or order of any State authority. The exemption is granted, however, only in so far as may be necessary or appropriate to enable the carrier and its officers, directors, and agents to enter into and carry into effect the plan, or in accordance with the plan to hold, maintain, and operate any properties and exercise any franchises. The paragraph obviously does not affect such provisions as the commodities clause (paragraph (8) of section 1 of the interstate commerce act) any more than it relieves carriers from complying with the provisions of the law relating to rates. In any event, should the plan appear to provide for the transportation by a carrier of coal, for example, mined by it and intended for sale, adequate protection undoubtedly will be obtained in the order of the commission.

Section 210 (3) provides that the entry of the order of the commission and the certification under section 209 shall be conclusive evidence that the carriers, their boards of directors, and the holders of voting securities have complied with the provisions of the title applicable to them. The purpose of this provision is to make the finding of the commission final, subject to court "control" in any case in which the commission's action is not in accordance with law, or in which it has acted arbitrarily or without evidence.

Section 210 (4) is intended to meet the situation arising by virtue of certain conveyances to carriers with a specific prohibition upon any disposition by such carrier of the property conveyed and a provision providing for reversion to the grantor if a disposition is attempted.

EFFECT OF UNIFICATIONS

Effect of combinations generally.—It may be stated broadly that the disposition of a substantial part of its assets by a railroad corporation, or the merger or consolidation of such a corporation with another, can not be effected in the absence of statutory authority. Aside from the technical legal considerations applying to corporations generally, a paramount reason for this rule is found in the fact that the property and business of railroad corporations are affected with a public interest, and, without legislative sanction, public policy will not permit transactions materially affecting the organization or conduct of such properties or business. The statutes authorizing the sale of railroad properties and the consolidation or merger of railroad corporations ordinarily make express provision as to how far the rights, powers, franchises, privileges, immunities, and exemptions of a corporation will pass with a transfer of the properties. Usually it is provided, and in the absence of express provision a presumption arises, that all rights, powers, franchises, and privileges necessary to the operation of the properties pass with them upon a transfer. (Tennessee *v.* Whitworth (1885), 117 U. S. 139.) In the case of consolidation it is perhaps not strictly accurate to speak of a transfer of such rights, powers, etc., as it has been held that the new corporation takes them by grant, and not by transfer, and that in such cases the reference in the statutes to "all the rights, etc., of the constituent

companies" is merely descriptive. (Shields *v.* Ohio (1877), 95 U. S. 319.) But the effect is the same.

Generally speaking, the extent to which these intangible assets are transferred is not so great upon a sale of properties as in other forms of combination, but all franchises and powers necessary to the enjoyment of the property are as a general rule held to pass. (Morgan *v.* Louisiana (1876), 93 U. S. 217.)

In merger and consolidation the rights, franchises, etc., acquired by the continuing or consolidated company depend upon the language of the statute authorizing the combination and the intention of the legislature, and if there is no provision in the statute a presumption arises that all rights, franchises, and privileges, other than those which are personal or exclusive, are transferred with the property subject to the same burdens and restrictions as in the hands of the merging or consolidating companies.

Both in merger and in consolidation, exclusive rights and privileges under the charter of a merging or constituent corporation, which are to be strictly construed against the corporation, are held to pass only when a transfer of such rights or privileges has been authorized, originally or subsequently, by the statute under which the combination takes place or by charter, and every doubt as to the authorization will be construed against the company. (See Rochester Railway Co. *v.* City of Rochester (1906), 205 U. S. 236.) Nor does an exemption enjoyed by a continuing company extend to property acquired from a merging company unless expressly so provided. (Central Railroad, etc., Co. *v.* Georgia (1875), 92 U. S. 665.) The law in effect at the time of a consolidation controls, for, as has been noticed, the statute makes a new grant, and can not do so in violation of a general restriction in effect at the time. For example, if a constitutional prohibition against exemptions from taxation has intervened before a consolidation is effected, the consolidated company can not acquire any such exemption as may have been enjoyed by a constituent company. (Keokuk & Western R. R. Co. *v.* Missouri (1894), 152 U. S. 301.) In the case of a merger, in similar circumstances, a transfer of the exemption might be possible.

The same general rules apply in combinations of companies incorporated under the laws of different States. However, when two or more such corporations merge, the corporation which continues in existence acquires no new rights, powers, or privileges in the State of its incorporation but succeeds to the franchises of the merging corporations and may exercise their powers in the States of their creation, subject in each case to the restrictions and burdens under which the merging corporations existed. The extent to which the powers, privileges, and immunities of the merging corporations pass to the continuing corporation depends in each case upon the intention and language of the statute under which the merger is effected.

The same is true in the case of a consolidation of corporations of different States. Such consolidation requires the authorization of the legislature of each of the States concerned. While there has been some difference of opinion as to whether a single new corporation is created or the old corporations merely continue in existence under a common name and direction, the great weight of authority is to the effect that a new consolidated corporation is created just as in the case of a consolidation of two corporations of the same State.

This corporation is a domestic corporation in each of the States concerned, has a domicile in each of them, and is subject to the control and regulation of each to the extent that its business is conducted therein. "It is a single corporation with two parents who live apart and independently, each having absolute control in his own domain. It owes allegiance and is subject alike to each, and is dependent upon each alike for future favors." (Attorney General *v.* N. Y., N. H. & H. R. R. Co., 198 Mass. 413.) The consolidated corporation can not exercise in one State powers given to it only by its charter in another State which other corporations in the first State are not permitted to exercise.

The distinction between merger and consolidation is here apparent, as in the case of merger the continuing corporation does not become a domestic corporation in the State in which the merging corporation was organized. (Lee *v.* Atlantic Coast Line R. Co. (1906), 150 Fed. 775.)

In the Delaware Railroad Tax case (1873), 18 Wall. 206, a leading case in the United States Supreme Court, it is stated that a corporation formed by the consolidation of corporations of different States will, in its relation to each of the States, stand as a separate corporation governed by the laws of that State as to its property therein and subject to taxation in conformity with such laws.

For a more detailed statement of the effects of consolidation, both of domestic corporations and of corporations of different States, reference may be made to the note, heretofore referred to, in 89 Am. St. Rep., at page 604. This note has been frequently cited and quoted in the cases. As consolidation, though authorized by the bill, is to be carried out under State law, the bill makes no attempt to state its effect, which must depend in each case upon the law of the State or States in question. It has been discussed here mainly for purposes of comparison.

Effect of corporate merger under the bill.—Section 211 states the effect of a corporate merger carried out under the bill. Paragraph (1) provides that upon the effective date of the order of the commission approving the plan the following (except as restricted or limited in the plan as approved) will result:

(*a*) The merging corporations shall be held to be merged into the continuing corporation.

(*b*) The continuing corporation shall have all the rights, privileges, powers, immunities, exemptions, and franchises of each of the merging corporations. Such a provision, as observed above, will entitle the continuing corporation to exercise all powers and franchises and to enjoy all the rights, privileges, immunities, and exemptions theretofore exercised or enjoyed by each of the merging corporations in the same territory and in respect to the same property as in the case of such merging corporation. Exemptions from taxation are included.

(*c*) The title and right of each merging corporation in all property, real and personal, and in all choses in action shall be held to be transferred to and vested in the continuing corporation.

(*d*) All debts, liabilities, and duties of each merging corporation will be enforceable against the continuing corporation to the same extent as if originally incurred or contracted by it.

Paragraph (2) of this section provides that the rights of creditors and all liens upon properties of each merging corporation shall be

preserved unimpaired and that each merging corporation shall be deemed to continue in existence so far as necessary to preserve such rights and liens.

Under paragraph (3) the continuing corporation will stand in the shoes of each merging corporation in any action or proceeding pending by or against it.

DISSENTING STOCKHOLDERS

Sections 212 and 213 provide for the protection of the legitimate interests of minority stockholders. It should be noted that there are other provisions heretofore referred to relating to protective measures available to all stockholders. Sections 212 and 213 are concerned with minority stockholders only and deal with three main questions: First, the basis of selection of minority stockholders to be protected; second, the extent of the protection to be afforded; and third, the machinery for making that protection available.

The dominating purpose of these sections is to afford certain stockholders the opportunity to refrain from going along, against their will, with the new plan, to withdraw from the enterprise, and to liquidate their holdings. Obviously, however, this opportunity need not be afforded to all stockholders. Those who favored the adoption of the plan may be dismissed from further consideration. They cast their lot with the new plan. They stand by their own decision and if they desire to get out may do so only by a sale of their stock in the open market or otherwise. Nor is the committee satisfied that the opportunity should be given to every stockholder who opposed the adoption of the plan.

Basis of selection of minority stockholders.—In determining the basis of selection of those who, from among the total number opposing the plan, should have the opportunity to dispose of their stock, two factors have been observed: The effect upon their holdings of stock, and the time when they became stockholders.

Selection as affected by the plan.—Paragraph (1) of section 212 specifies the classes of stockholders (from the standpoint of the effect of the plan) who may, if they meet the requirements of paragraph (2) of that section, become dissenting stockholders within the meaning of the bill and as such be entitled to its benefits. The most usual case in which a stockholder may desire to withdraw from the enterprise and liquidate his holdings is where the corporate transaction involves the disposition of all, or substantially all, of the properties, franchises, and other assets of the company. When the holders of a majority of the stock of a corporation have power to take such a step the right of dissenting minority stockholders to receive payment in cash for their shares is almost universally recognized by the courts and is expressly stated in the statutes of a number of the States. Accordingly, the first class of stockholders specified in the paragraph (in subdivision (a) thereof) as entitled to become dissenting stockholders includes those holding shares issued by a carrier a party to a plan which involves the disposition of all, or substantially all, of the properties, franchises, and other assets of such carrier.

Less frequently, an acquisition by his company of properties, franchises, or other assets gives rise to a situation which in justice requires that a dissenting stockholder be entitled to withdraw from the enterprise and liquidate his holdings. The basis of such a right is the extension or alteration of the business and purposes of the company to such a degree as to amount to a material change in the enterprise upon which the stockholder embarked, to which he should not be forced to submit. The extent of change necessary to give rise to such a right is a matter of degree, and has been the subject of somewhat varying judicial decision. It has seemed best therefore to leave the question largely to the law of the State by which the corporation was created, to which law it must be assumed the stockholder looked when he entered into the contract by purchasing his share. It is therefore provided, by subdivision (b) of paragraph (1) of section 212, that the holder of a share in a carrier corporation which proposes to acquire properties, franchises, or other assets may become a dissenting stockholder for the purposes of the bill only if he would have been entitled to obtain payment for his share if the same plan were being carried out under the law of the State of incorporation of his company.

It is to be expected that many plans will include both disposition of properties and acquisition of properties by the same carrier. The plan would then fall within the terms of both subdivisions. But the acquisition might be such as would not, under the State law, give rise to any right on the part of a dissenting stockholder. In order to make it clear that in such cases the minority stockholders' rights are not dependent upon the State law, it is provided that the provisions of subdivision (b) shall not be held to limit the application of the provisions of subdivision (a).

For the purposes of this section it is immaterial whether the disposition or acquisition referred to is effected through a corporate merger, sale, exchange, or lease, or in any other manner, except through a corporate consolidation, which, under the bill, is left to State law, and in which, therefore, the rights of stockholders must depend entirely upon that law.

Conditions to be met by stockholders.—Not all of the stockholders identified as above are given the opportunity to dispose of their stock. An element of time must be considered. The bill specifically provides that a stockholder shall be entitled to the privilege only if he was registered as such upon the date of the entry of the order of the commission approving the plan. The purpose of this limitation is to discourage speculation in the stocks of carriers parties to a plan of unification. Purchasers of such stocks subsequent to the date of the entry of the order of the commission will be on notice of the pending unification. If they purchase after the entry of the order and before the closing of the books they may, of course, vote at the special meeting, but no reason is perceived why they need be given a special opportunity to dispose of their stock. Of course, there will be purchases in this intervening period intended for bona fide investment, and there may be other acquisitions—e. g., by legacy—free from any speculative element, as to either or both of which some possible hardship may be entailed by withholding the opportunity to dispose of the stock. But on the whole and after due consideration of the administrative difficulties attendant upon segregating the several methods of acquisition, the committee concluded that the more feasible course was to exclude

all stock acquired after the date of the entry of the order of the commission.

The mere fact, however, that the stockholder was registered on that date is not enough to entitle him to dispose of his stock to the carrier. Certain conditions must be satisfied, namely: He must have continued to be registered as a stockholder until the closing of the books for the special meeting called to pass upon the adoption of the plan; he must have voted against the adoption of the plan at the meeting or prior to the meeting have given the carrier a written protest against the adoption of the plan; and he must have given the carrier, within 60 days after the special meeting, written notice that he does not consent to the adoption of the plan. If all the foregoing conditions are satisfied, the stockholder is classed as a dissenting stockholder.

Again, however, the bare fact that a stockholder has qualified as a dissenting stockholder does not of itself entitle him to dispose of his stock to the carrier. At this point the petitioning carriers have the privilege to withdraw and abandon their petition proposing the plan. This is specifically provided in paragraph (3) of section 212—that they may withdraw and abandon the petition "proposing a plan as to which there is a dissenting stockholder." The reason for this provision is to make it plain that the carriers may desist from carrying their plan into operation if the number of dissenting stockholders would impose upon the carriers too heavy a financial burden. This privilege to the carriers is designed to be the equivalent, under the condition specified, of the privilege of the condemnor in ordinary condemnation proceedings to abandon the condemnation if the cost is excessive. True, at this particular juncture in the unification proceedings, the exact cost of purchasing the dissenting stock is not known (for the purchase price is determined subsequently in the condemnation proceedings), but the maximum probable cost can be estimated once it is known what stockholders have dissented and how much stock they have.

If the plan is not abandoned but comes into operation on the effective date of the order of the commission, the dissenting stockholder is at once entitled to sell his stock to the carrier which is to carry on the business. But the privilege does not necessarily include all the stock owned by the dissenting stockholder; it includes only the stock which was registered in his name continuously from the date of the entry of the order of the commission up to the date when he qualified as a dissenting stockholder by giving the required written notice. Nor is it merely a personal privilege of the dissenting stockholder; it is a privilege which attaches to the share itself (see paragraph (3) of section 212), so that irrespective of who may be the holder subsequently to the dissenting stockholder himself the carrier is required to purchase the stock.

Extent of the protection.—Just compensation must be paid for the stock. The bill proceeds on the basis that (in all cases where the stockholder and the carrier can not agree as to the price) the stock shall be taken by eminent domain. On the basis of eminent domain the Constitution (fifth amendment) requires that just compensation shall be paid. The language of the bill, then, is the language of the Constitution. In the last analysis it is a matter of judicial determination whether the value fixed for any share of stock constitutes just compensation. (Monongahela Navigation Co. *v.* United States (1893), 148 U. S. 312.) Higher than this just value, the committee would not go; lower than this, even if the committee thought the bill should be so framed, the Constitution would not permit the price to be fixed.

The committee was impressed with the suggestion made in the public hearings on the bill (see p. 318) that the value should be determined without appreciation or depreciation by reason of the unification itself. An examination of the statutes of several States discloses that they attempt to meet the situation in several ways, the most frequent of which is to specify a given date as of which the value shall be determined, e. g., the date of the sale, merger, stockholders' meeting, etc. But the committee concluded not to write any rigid rule into the bill. Considerations of the character mentioned above are implicit in the term "just compensation." Other considerations also may enter. As an additional matter and to make sure that the dissenting stockholders shall have the fullest protection in respect to the valuation of their stock in condemnation proceedings, provision is made for taxing the costs and (subject to the approval of the commission or the court) the expenses incurred in the condemnation proceedings upon the carrier involved.

The desirability of inserting this provision can hardly be exaggerated. It removes a long-standing reproach to the law. Hitherto the small stockholder's remedy has been illusory. He has been burdened with the payment of those counsel fees which are not taxable against the corporation and in practice, where the holding of stock is small, their amount renders the right to institute proceedings nugatory. In effect he has had a right without a remedy—a right to just compensation for his stock but no reasonable opportunity to enforce it. In the public hearings the grounds of reason and justice on which this provision in the bill is based were admitted on all hands. Counsel for the railroads accepted it. Your committee is of the opinion that this is one of the most important safeguards provided in the bill for the small stockholder. His right to just compensation will for the future exist not only in theory but also in fact.

Machinery for making the protection available.—In general, the machinery and the methods are those for condemnation proceedings. Appropriate jurisdiction is conferred upon Federal courts. The carrier is under a duty to institute the proceedings. The method of enforcement, however, is not by penalty, but by giving the stockholder himself the privilege to institute the proceedings if the carrier fails to do so. The value of the stock, the just compensation to be paid, is fixed in the first instance by the commission. The report of the commission is not binding upon the court but is to be given the effect of the report of a master in chancery.

TAXATION

In order to enable the carriers which have obtained the commission's approval of a plan of unification under this title to carry out the plan without being unduly burdened by transfer taxes, section 214 provides that no tax shall be levied by the United States or by any State in respect to any issue, sale, delivery, or transfer of any security, or any agreement to sell, or memorandum of sale of, any security

involved in the proposed unification. It is to be noted that this exemption extends only to securities and that the provisions of State laws relating to grants, assignments, transfers, or other conveyances of any interest in real or personal property (other than securities) are not affected by the bill.

The section also provides that gain from the sale or other disposition of property or income from any distribution in connection with the unification shall not be taxed by a State or any political subdivision thereof except to the extent that moneys are received from time to time from such transaction. This in effect does not relieve the carriers from State income taxes but merely postpones the time for the collection of the taxes, as in the case of the provision relating to Federal taxation. It is further provided that a unification shall be held to be a reorganization as that term is used in Part I of Title II of the revenue act of 1926. The effect of this latter provision is to subject the carriers which have entered into a plan of unification approved by the commission, to Federal taxation to the same extent that they would be taxed if they were parties to a reorganization as above referred to. Briefly, the legal effect is that gain will be recognized only to the extent that cash is received, with an appropriate adjustment of the basis upon which gain from a future sale is computed, and depreciation and depletion allowed.

APPLICATION OF EXISTING LAWS

As heretofore explained, paragraph (2) of section 5 of the present law is the provision under which the commission has been considering and approving or disapproving applications of carriers for control of other carriers, through lease, purchase of stock, or in any other manner not involving the consolidation of the carriers into a single system for ownership, management, and operation. Applications under this paragraph have varied from a short-term experimental lease of a carrier in the hands of a receiver to a lease for 999 years of all the properties of a carrier and the acquisition of the stock issued by such carrier. In fact, some applications have provided for corporate mergers, but none of these has been approved.

The committee considered very carefully the policy which should be applied to the applications under this paragraph and has reached the following conclusions:

(1) No applications should be received under this paragraph after the new bill becomes law. (See sec. 3 (2) of the bill.)

(2) The standards prescribed in the bill for the determination of the public interest should be considered by the commission in connection with pending applications the consideration of which is continued under paragraph (2) of section 5. (See sec. 3 (2) of the bill.)

(3) Many of the pending applications propose acquisitions of control involving carriers of importance, affecting more than a small territory, or presenting substantial problems of policy. The further consideration of these applications, because of their nature, should continue under the new bill rather than under the present law. In order to meet this situation, it is provided that the commission may require that further or supplemental proceedings upon the application be had under the new bill, if the commission believes that the public interest will be promoted more effectually by proceeding under the new bill rather than under the present law. It will not be necessary, however, that entirely new proceedings be instituted under the new bill. (See sec. 215 (1) of the bill.)

(4) Many of the pending applications propose short-term leases, or leases of carrier property where control through stock ownership is already vested in the lessee carrier, or other acquisitions of control which may well be authorized under the present law. Under the bill the commission is authorized to continue the consideration of these applications under the present law, subject, however, to the provision that its determination of public interest must be made in accordance with provisions of the new bill. Obviously it was impossible to describe with accuracy the classes of cases which should be subjected to the provisions of the new bill and those minor cases the consideration of which could continue under the present law. Consequently it was necessary to place upon the commission the responsibility of determining whether or not the public interest required the transfer. (See sec. 215 (1) of the bill.)

In order that the evidence produced before the commission in proceedings under paragraph (2), (4), or (5) of section 5 prior to the enactment of the bill may be preserved and made available in future proceedings under the bill, it is specifically provided in section 215 (2) that all such evidence, and abstracts or written materials based upon such evidence, shall be preserved and shall be available to the commission. If any evidence is so used, however, it is provided that it be made a part of the record in the proceedings by reference or otherwise.

REMEDIES OF STOCKHOLDERS EXCLUSIVE

Section 216 provides that the remedies afforded by the bill shall constitute the exclusive remedies of stockholders of any carrier in opposition to the exercise of any authority or power under the bill. As hereinbefore stated, such remedies are ample to protect the rights of dissenting stockholders who are not in accord with a plan of unification.

REGULATIONS

Section 217 grants to the commission authority to prescribe such rules and regulations as it may deem necessary for carrying out the provisions of the bill. It was thought that such a provision was necessary in view of the fact that the general grant of authority to the commission to make rules and regulations under sections 12 and 17 of the interstate commerce act might not cover all matters contemplated by the bill.

REPEALS

Section 3 of the bill provides for the repeal of paragraphs (4), (5), and (6) of section 5 of the interstate commerce act. These are provisions relating to consolidations which were added by the transportation act of 1920, for which the new bill is a substitute.

Paragraph (2) of section 5 of the interstate commerce act is amended by section 3 (2) of the bill so as to provide that no future applications shall be made under that paragraph. This amendment

is necessary in view of the policy adopted by the committee to make all future unifications subject to the provisions of the bill.

SHORT TITLE

The act may be cited as the "Railway Consolidation Act of 1928."

SEPARABILITY OF PROVISIONS

Your committee felt that the bill should be treated as a unit as it might become impossible to administer in the event that certain provisions were held unconstitutional. Therefore, the usual section dealing with the separability of provisions which was included in former bills was omitted.

III. FULL TEXT OF BILL

The following is a full text of the committee bill (H. R. 12620, 70th Cong., 1st sess.) as introduced by Mr. Parker and reported without amendment by the committee:

A BILL To authorize the unification of carriers engaged in interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, is amended by inserting after the enacting clause thereof the following heading:

"TITLE I.—REGULATORY PROVISIONS—GENERAL"

SEC. 2. The Interstate Commerce Act, as amended, is amended by adding at the end thereof a new title to read as follows:

"TITLE II.—REGULATORY PROVISIONS—UNIFICATION OF CARRIERS

"DEFINITIONS

"SEC. 201. As used in this title—

"(1) The term 'interstate or foreign commerce' means commerce between any place in a State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State or within the District of Columbia, but through any place outside thereof; or within the District of Columbia.

"(2) The term 'carrier' means (a) a common carrier engaged in the transportation in interstate or foreign commerce of passengers or property wholly by railroad or partly by railroad and partly by water, within the continental United States, subject to Title I of this Act; (b) a railroad or terminal corporation, even though not engaged in such transportation, which owns property used or held for use in such transportation; and (c) a corporation organized to effect a unification under this title and for the purpose of engaging in such transportation; but does not include sleeping-car companies or express companies.

"(3) The term 'securities' includes shares of capital stock, bonds, or other evidences of interest or indebtedness issued by a carrier.

"(4) The term 'voting securities' means all outstanding securities having voting privileges.

"AUTHORITY FOR UNIFICATIONS

"SEC. 202. (1) The unification of carriers or of property of carriers, through any method or procedure provided for in this title, is hereby authorized in any case in which, in the opinion of the commission, such unification will promote the public interest. In determining the public interest the commission shall give due consideration to the maintenance of competition between carriers and the prevention of any undue lessening of existing competition, the preservation

and improvement of the service afforded by the necessary weak or short lines, the promotion of economy, the affording of better service, the securing of a simplified and more effective regulation of carriers, the ultimate establishment of a number of strong and efficient systems well balanced within themselves and with other systems, and to such other factors as may be in the public interest.

"(2) It shall be unlawful for any carrier, after the enactment of the Railway Consolidation Act of 1928, to consolidate or merge with any other carrier or to acquire directly, or indirectly through any agency, any right, title, or interest in any of the railway properties of, or any of the voting securities issued by, any other carrier—unless such consolidation, merger, or acquisition is in accordance with the provisions of this title or with an order of the commission (entered before or after the enactment of the Railway Consolidation Act of 1928) under Title I; but the provisions of this paragraph shall not be held to prohibit the formation of a subsidiary corporation, and the acquisition of all or any part of the securities thereof, for the construction, operation, and ownership of branches, extensions, or terminals, or equipment or facilities to be used in connection with such branches, extensions, or terminals.

"UNIFICATION UNDER AUTHORITY OF THIS TITLE

"SEC. 203. (1) In order to bring about a unification, two or more carriers shall have power to agree on a plan therefor to be carried out under the authority of this title.

"(2) The plan may provide for one or more of the following:

"(a) An acquisition by or transfer to one of the petitioning carriers or a transfer to any other carrier, by purchase, sale, exchange, lease, or otherwise, of all or a part, or the right to operate all or a part, of the properties and franchises of one or more carriers, and, if so desired, the disposition of all or a part of the remaining assets of any such carrier.

"(b) A corporate merger of one or more carriers into one of the petitioning carriers or any other carrier corporation.

"(c) A corporate consolidation of two or more carriers but only if such consolidation is to be effected under State law.

"(d) An acquisition of securities by purchase, exchange, lease, or otherwise issued by a carrier, or the approval by the commission of an acquisition of securities under the provisions of paragraph (2) of section 205.

"JOINT AGREEMENT AND PETITION

"SEC. 204. (1) Two or more carriers may petition the commission for the approval of a plan to be carried out under the authority of this title if the boards of directors of such carriers have authorized, and such carriers have executed under their respective corporate seals, a joint agreement proposing such plan. The petition shall set out the plan in such detail as the commission may require. Any such petition or plan may be amended at any time by leave of the commission.

"(2) Such joint agreement shall set out—

"(a) The terms and conditions of the plan and the methods by which it is to be effected.

"(b) A statement of the finanical plan and of the securities, if any, to be authorized and to be issued in carrying out such plan, the substantial rights, privileges, powers, and immunities granted or denied the holders of one class of shares that are not equally granted or denied the holders of any other class of shares, and the terms on which such securities are to be issued.

"(c) Such other provisions and details not inconsistent with this title as the boards of directors may deem necessary or appropriate, or as the commission may require.

"(3) Any such joint agreement shall be held to be authorized by the board of directors of any such carrier if a majority of the directors in office vote therefor.

"(4) A copy of the joint agreement, executed in accordance with the provisions of this section, shall be filed as a part of the petition.

"ACQUISITION OF SECURITIES BY A CARRIER

"SEC. 205. (1) Any carrier, in order to bring about a unification through the acquisition of securities, may petition the commission for the approval of a plan to be effected by the acquisition by such carrier of securities issued by any other carrier or carriers, if such plan has been adopted by the board of directors of the

petitioning carrier. Such petition shall set out the plan, including the terms, methods, and purpose of the proposed acquisition and the issue of any new securities that may be involved therein, in such detail as the commission may require. Such plan shall be held to be adopted by the board of directors of the petitioning carrier if a majority of the directors in office vote therefor.

"(2) Any carrier, in order to bring about a unification, shall have power to acquire at any time securities issued by a carrier classified during the preceding calendar year by the commission as a class two or a class three carrier if such acquisition has been authorized by the board of directors of the acquiring carrier; but the privilege of voting in respect to any securities so acquired shall not be exercised by the acquiring carrier, directly or indirectly, until the commission has by order approved such acquisition upon petition therefor by such carrier. Such petition shall set out the terms, methods, and purpose of such acquisition and such other details in respect thereto as the commission may require. If, after hearing, the commission refuses to approve any such acquisition, the securities involved shall be sold or otherwise disposed of by the carrier in such manner as the commission shall prescribe. Any such acquisition shall be held to have been authorized by the board of directors of the acquiring carrier if a majority of the directors in office vote therefor.

"NOTICE AND HEARING

"SEC. 206. (1) The commission shall give reasonable notice of the time and place for a public hearing to each of the carriers filing, or joining in the filing of, a petition under this title, to the governor of each State in which is located any part of the lines of any of such carriers, and to the executive or administrative agency of each such State having jurisdiction over carriers by railroad. Such carriers, and any governor and agency so notified, or any representative designated by any such governor or agency, and, subject to such rules as the commission may prescribe, any other person having an interest, shall be afforded a reasonable opportunity to be heard.

"(2) In any proceeding upon a petition filed under this title the commission may, in its discretion, without separate hearing, take any action which it is authorized to take under the provisions of section 20a of this Act; and in any proceeding upon a petition filed under section 204 the commission may, in its discretion, without separate hearing, take any action which it is authorized to take under the provisions of paragraphs (18), (19), or (20) of section 1 of this Act.

"(3) Prior to or at the time a petition is called for hearing, but not thereafter except for good cause shown, any carrier may file with the commission an intervener's petition praying that it may be made a party to the proposed unification.

"ORDER OF THE COMMISSION

"SEC. 207. (1) If, after such hearing, the commission is of the opinion that the proposed unification will promote the public interest, in accordance with the provisions of section 202, and finds that such provisions of this title as are conditions precedent to the entry of the order have been complied with, the commission shall enter an order approving the plan or, in the case of a petition under paragraph (2) of section 205, the acquisition of securities. The commission may approve any such plan or acquisition by the methods and upon the terms and conditions set forth in the petition, or with such modifications thereof, or by such methods or upon such terms and conditions (including the joint or common use of terminal facilities and main-line tracks for a reasonable distance outside the terminal, subject to the provisions of paragraph (4) of section 3 in respect to compensation and damages), as it may prescribe in the public interest. If the commission finds, upon objection of a holder of any security issued by a carrier a party to the plan, that any of the terms and conditions of such plan are unfair or unreasonable, then it may approve such plan upon such terms and conditions as it finds to be fair and reasonable.

"(2) If the order of the commission (whether or not any intervener's petition has been filed) imposes as a condition to the approval of the proposed unification that a carrier not joining in filing the petition be made a party to the proposed unification, the carriers filing the petition may report to the commission (at any time prior to the date upon which the holders of the voting securities consent to the adoption of the plan as approved) the efforts made by them to comply with the condition; and if, after hearing, the commission is of the opinion that the carrier that is to be made a party is insisting on unreasonable terms, the commission may revoke or modify the condition or, if requested to do so by such carrier, may prescribe the terms on which the carrier may be made a party to the proposed unification.

"(3) The carriers and the commission shall give due consideration to the inclusion in the plan of short and of weak carriers in the territory involved.

"(4) The issue of securities, or the assumption of any obligation or liability in respect to any securities, shall be subject to all the provisions of section 20a, but such provisions may be administered as provided in paragraph (2) of section 206, except that in no case shall the commission authorize the issuance of securities based upon a capitalization of intangible values resulting from the proposed unification.

"CONSENT OF CARRIERS

"SEC. 208. (1) An order of the commission under section 207 shall not become effective unless the board of directors and the holders of the voting securities of each of the carriers designated therein, or, in the case of an acquisition of securities under section 205 or under subdivision (d) of paragraph (2) of section 203, the board of directors of the acquiring carrier, consent thereto.

"(2) The board of directors of a carrier shall be held to have consented thereto if a majority of the directors in office vote for the adoption of the plan, as approved.

"(3) The holders of the voting securities of any such carrier shall be held to have consented thereto if a majority of the votes to which the holders of all voting securities are entitled, are cast in favor of the adoption of the plan as approved, at a special meeting held for such purpose. Any such special meeting shall be held and conducted, and notice thereof shall be given, in any manner lawful for a special meeting of the stockholders of such carrier; and the right of any holder of a voting security to vote, and the number of votes which any such holder is entitled to cast, upon any question at such meeting, and the method of voting, shall be determined in the same manner and subject to the same conditions and limitations as if such question were presented at a special meeting of such stockholders.

"(4) A certificate for each carrier, under its corporate seal, signed by its president or one of its vice presidents, and attested by its secretary or an assistant secretary, and duly acknowledged before a notary public by such president or vice president and secretary or assistant secretary, that its board of directors and, if required under the provisions of paragraph (1) of this section, the holders of its voting securities, have consented thereto, shall be filed with the commission and shall be prima facie evidence of the facts so certified.

"EFFECTIVE DATE OF ORDER OF THE COMMISSION

"SEC. 209. An order of the commission under section 207 shall become effective upon the expiration of thirty days from the date on which the commission certifies that the board of directors, and, if required, the holders of the voting securities, of each of the carriers designated in such order have consented thereto, in accordance with the provisions of section 208, except as such order is suspended or set aside, in whole or in part, by a court of competent jurisdiction upon suit begun prior to the expiration of such period.

"EFFECT OF ORDER OF THE COMMISSION

"SEC. 210. (1) On and after the effective date of the order of the commission approving a plan, each carrier designated in any such order, in accordance with such order, shall have authority and power necessary or appropriate to carry into effect, and to do any and all acts necessary or appropriate in order to carry into effect, such plan as approved; to issue, sell, or exchange securities, in accordance with the terms and conditions and by the methods, if any, set forth in such order; to hold, maintain, and operate any properties acquired by it pursuant to such plan; and to exercise its franchises, and to carry on and to do any business authorized by its franchises, whether theretofore its own or acqured by it pursuant to such plan.

"(2) Any such carrier and its officers, directors, agents, and employees shall be relieved from the operation of the 'antitrust laws' as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914; from the operation of the first sentence of paragraph (12) of section 20a of this Act; from all other restraints and prohibitions of any other law of the United States; and

(except in the case of a corporate consolidation) from all restraints or prohibitions of the laws or constitution of any State or any decision or order of any State authority—in so far as may be necessary or appropriate to enable such carrier and its officers, directors, and agents to enter into and carry into effect such plan, or in accordance with such plan to hold, maintain, and operate any properties and exercise any franchises, whether theretofore its own or acquired by it pursuant to such plan, or to acquire securities in accordance with the provisions of paragraph (2) of section 205.

"(3) The entry of any order by the commission under this title and the certification by the commission under section 209 shall be conclusive evidence that the carriers designated in such order, and their boards of directors and holders of voting securities, have complied with the provisions of this title which are applicable to such carriers, boards of directors, and holders of voting securities and which are conditions precedent to the entry of such order and such certification.

"(4) The title to, or right or interest in, real estate, vested by deed or otherwise in any carrier designated in the order of the commission, shall not be held to revert or to be in any way impaired by reason of this title of this Act or of anything done under the provisions of this title of this Act or an order of the commission entered thereunder.

"EFFECT OF CORPORATE MERGER

"SEC. 211. (1) Upon the effective date of the order of the commission approving a plan for a corporate merger of one or more carriers (referred to in this title as the 'merging corporations') into one of the petitioning carriers or any other carrier corporation (referred to in this title as the 'continuing corporation'), except as restricted or limited in the plan as approved—

"(a) The merging corporations shall be held to be merged into the continuing corporation;

"(b) The continuing corporation shall have all and singular the rights, privileges, powers, immunities, exemptions, and franchises of each of the merging corporations, respectively, but only to the same extent as possessed or enjoyed by, and to be possessed and enjoyed only in the same territory as in the case of, each such merging corporation;

"(c) All property, real and personal, and all debts due on whatever account, including stock subscriptions and other things in action, belonging to any of the merging corporations shall be held to be transferred to and vested in the continuing corporation without further act or deed, as effectually as they were vested in the merging corporation;

"(d) All debts, liabilities, and duties of each of the merging corporations shall thenceforth attach to the continuing corporation and become and be its debts, liabilities, and duties and be enforceable against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by or imposed upon it.

"(2) The rights of creditors and all liens upon the property of any of the merging corporations shall be preserved unimpaired and the respective corporations shall be deemed to continue in existence so far as may be necessary to preserve the same.

"(3) Any action or proceeding pending, upon the effective date of the order of the commission, by or against any such merging corporation may be prosecuted to judgment as if such merger had not been effected, but the continuing corporation may upon motion become or be made a party thereto.

"DISSENTING STOCKHOLDERS

"SEC. 212. (1) The holder of a share of capital stock issued by a carrier a party to a plan approved by the commission may, in accordance with the provisions of this section, become a dissenting stockholder within the meaning of this title, if such plan provides (through a corporate merger, sale, exchange, or lease, or in any other manner except through a corporate consolidation) for—

"(a) The disposition of all or substantially all the properties, franchises, and other assets of such carrier; or

"(b) The acquisition by such carrier of properties, franchises, or other assets; except that the provisions of this subdivision shall not apply to any person unless, if such plan were being carried out under State law, such person, if he did not consent thereto, would be entitled to obtain payment in cash for his share, and

except that this subdivision shall not be held to limit the application of subdivision (a) of this paragraph.

"(2) The holder of any such share shall be held to be a dissenting stockholder only if—

"(a) He was registered as the holder of such share upon the date of the entry of the order of the commission approving the plan, and continued to be so registered until the closing of the books for the purpose of the special meeting at which the consent to the adoption of such plan was voted; and

"(b) He voted against the adoption of the plan at such meeting or prior thereto gave to the carrier of which he is a stockholder a written protest against the adoption of such plan; and

"(c) Within sixty days after such meeting he gave written notice to such carrier that he does not consent to the adoption of such plan (except that if at the time of such meeting any such registered stockholder is deceased or under a legal disability and there is no legal representative duly authorized to act for him, or if any such registered stockholder dies or becomes under a legal disability within such sixty days, then such notice may be given at any time prior to the expiration of sixty days from the date on which such disability is removed or the date on which a legal representative is duly authorized to act for such stockholder, whichever date is the earlier).

"(3) The petitioning carriers, upon notice filed with the commission at any time before the effective date of the order of the commission approving the plan, may withdraw and abandon their petition proposing a plan as to which there is a dissenting stockholder; but if not so withdrawn or abandoned, then on and after such effective date, every share of stock which was registered in the name of a dissenting stockholder prior to the entry of the order of the commission approving the plan and which continued to be so registered until the giving of the notice under subdivision (c) of paragraph (2) of this section shall be purchased by the acquiring or continuing carrier, or, if not so purchased, taken by condemnation in accordance with the provisions of section 213.

"RIGHT OF EMINENT DOMAIN

"SEC. 213. (1) Any carrier which fails to purchase stock as required by section 212 shall institute proceedings, in the United States district court for a judicial district within a State in which the carrier which issued the stock is chartered, for the condemnation of such stock. In the case of a carrier chartered under an Act of Congress, then such proceedings shall be instituted in the Supreme Court of the District of Columbia.

"(2) If such carrier fails to acquire such stock by purchase or condemnation any holder of such stock may, after the expiration of 90 days from the effective date of the order of the commission approving the plan, institute in his behalf proceedings for the condemnation of such stock by such carrier. Such proceedings shall be had in the court which would have had jurisdiction of such proceedings if instituted by the carrier.

"(3) Any carrier authorized by an order of the commission entered under this title to acquire any property (other than stock) held or enjoyed without power of assignment or transfer, or any right or interest in any such property, may, with the consent of the owner or holder thereof, institute proceedings in the United States district court for the judicial district in which such property is located, or of which the owner of such property, right, or interest is an inhabitant, for the condemnation of such property, right, or interest. If such property is located in the District of Columbia, application may be made to the Supreme Court of the District of Columbia.

"(4) Upon the institution of any proceedings under this section, the court shall transmit, under its seal, the petition in such proceedings, or a copy thereof, to the commission, for an inquiry and report to the court of the just compensation to be paid for the stock or other property, or right or interest in property, to be condemned in said proceedings. The costs of any proceedings under this section and, subject to the approval of the commission or the court (as the case may be), the expenses (including reasonable counsel fees) incurred in connection with such proceedings, shall be taxed against the condemning carrier.

"(5) The United States district courts and the Supreme Court of the District of Columbia are hereby given jurisdiction to hear and determine proceedings for condemnation instituted under this section, and to enter appropriate orders of condemnation therein, and it shall be the duty of the commission, upon receipt

of any such petition, or a copy thereof, from any such court, to ascertain the just compensation to be paid for any such stock, or any such property, right, or interest, and to report thereon to the court.

"(6) The practice, pleading, forms, and modes of procedure for proceedings for condemnation under this section (except proceedings by the commission) shall conform as nearly as may be to the practice, pleadings, forms, and modes of proceeding in suits in equity, and the powers of the courts of the United States to prescribe rules of proceeding shall apply to proceedings for condemnation under this section to the same extent as they apply to suits in equity; except that—

"(a) The holders of stock of any one carrier may be joined in one proceeding;

"(b) Notice of any such petition shall be given to the holders of the stock, or their legal representatives, or to the owners of the property or the right or interest therein, to be condemned, either by personal service, or, if for good cause shown permitted by the court, by publication at least once a week for four successive weeks in a newspaper published in the judicial district or in the District of Columbia (as the case may be);

"(c) Reasonable notice and opportunity to be heard shall be afforded each such holder or owner in such manner as the commission or the court (as the case may be) may prescribe; and

"(d) The report of the commission shall be treated by the court and proceeded on in the same manner as the report of a master in chancery in a suit in equity, and the court may, for good cause shown, hear and consider additional evidence or remand the proceedings to the commission for the taking of additional evidence and further consideration and report.

"(7) Upon the payment of the amount of the award, or in the case of refusal to receive the amount, then upon the deposit thereof with the clerk of the court, the stock or property or the right or interest therein shall be held to be transferred to the petitioning carrier and to have become its stock, property, right, or interest. In case of failure to pay the amount awarded within thirty days after the judgment or decree making the award has become final and upon the deposit with the clerk of the court of the certificate of such stock properly assigned or the documents properly transferring such property, right, or interest, final process to execute the award may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit.

"TAXATION

"SEC. 214. No tax shall be levied or collected under any revenue law of the United States, or by or under the authority of any State or any political subdivision thereof, in respect to any issue, sale, delivery, or transfer of any security, or any agreement to sell, or memorandum of sale of, any security, if in pursuance of an order of the commission under this title approving a plan. Gain from the sale or other disposition of property, or income from any distribution, in connection with any such unification, shall not be subject to tax by or under the authority of any State or any political subdivision thereof, except to the extent that money is received from time to time from such sale, disposition, or distribution. Any such unification shall be held to be a reorganization within the meaning of that term as used in Part I of Title II of the Revenue Act of 1926.

"APPLICATION OF EXISTING LAWS

"SEC. 215. (1) In the case of an application under paragraph (2) of section 5 the commission shall, if it is of the opinion that it is in the public interest, make it a condition of its further consideration of the application that further proceedings in respect thereto be in accordance with, and that the entry of any order therein be subject to, the provisions of this title.

"(2) Any of the evidence included in the record of the commission in its proceedings under paragraph (2), (4), or (5) of section 5 and any abstract or written materials made by the commission and based upon such evidence, shall be preserved and shall be available to and may be used by the commission in its proceedings upon a petition filed under this title; but any such evidence, abstract, or materials so used shall, by reference or otherwise, be made a part of its record in such proceedings.

"SEC. 216. The remedies afforded by this title shall constitute the exclusive remedies of any of the stockholders of a carrier in opposition to the exercise of any authority or power under this title.

"SEC. 217. The commission is authorized to prescribe from time to time such rules and regulations as it may deem necessary for carrying out the provisions of this title."

REPEALS

SEC. 3. (1) Paragraphs (4), (5), and (6) of section 5 of the Interstate Commerce Act are hereby repealed.

(2) Paragraph (2) of section 5 of the Interstate Commerce Act is hereby amended by adding at the end thereof a new sentence to read as follows: "No application shall be made under this paragraph after the enactment of the Railway Consolidation Act of 1928; and the commission shall apply the provisions of section 202 in determining the public interest under this paragraph after such date."

SHORT TITLE

SEC. 4. This act may be cited as the "Railway Consolidation Act of 1928."

VIEWS OF THE MINORITY

The undersigned members of the Committee on Interstate and Foreign Commerce dissent from the views of the majority in reporting H. R. 12620. Among the many reasons for our dissent are the following:

BILL TOO AMBITIOUS IN ITS SCOPE

(1) The provisions of the transportation act of 1920 which relate to unification of carriers were hastily and ill considered and are admittedly inadequate. Paragraph 2 of section 5, which authorizes unifications which do not amount to consolidations or mergers, is too elastic in certain particulars and too rigid in others. Paragraphs 4, 5, and 6 have been found unworkable for the reason that they require the Interstate Commerce Commission to authorize unifications only after the adoption of a complete plan for the consolidation of all railways into a limited number of systems. This the commission has found it impracticable to do as it was too ambitious a plan and one that no man or commission had the wisdom or the foresight to be able to put into effect. The minority was willing and desirable of joining in the correction of these defects in the existing law. A recommendation that this be done has been made by the Interstate Commerce Commission in its report to Congress for 1925, 1926, and 1927 in the following language:

> That paragraphs (2) to (6), inclusive, of section 5 of the interstate commerce act be amended (a) by omitting therefrom the existing requirement that we adopt and publish a complete plan of consolidation; (b) by making unlawful any consolidation or acquisition of the control of one carrier by another in any manner whatsoever, except without specific approval and authorization; (c) by giving us broad powers upon application and after hearing to approve or disapprove such consolidations, acquisitions of control, mergers, or unifications in any appropriate manner; (d) by giving us specific authority to disapprove a consolidation or acquisition upon the ground that it does not include a carrier or all or any part of its property which ought to be included in the public interest and which it is possible to include upon reasonable terms; (e) by modifying subparagraph (b) of paragraph (6) so that the value of the properties proposed to be consolidated can be more expeditiously determined; and (f) by providing that in the hearing and determination of applications under section 5 the results of our investigation in the proceeding on our docket known as No. 12964, Consolidation of Railroads, may be utilized in so far as deemed by us advisable.

This provision the majority was unwilling to adopt but under the guise of meeting this recommendation the committee has approved this bill which covers a much broader field than the recommendation and, in our opinion, deals with aspects of unification never considered by the commission or at least not recommended by them and which are altogether unnecessary for the correction of such defects in the existing law as the commission has pointed out. Therefore, one of the fundamental faults of the bill is that it is too ambitious in its scope. Had the committee confined its efforts to meeting the recommendation of the Interstate Commerce Commission, even that

would have required a great capacity to deal with a highly complex subject. They have sought by the bill to cover to its remotest extremity the entire field of railroad unification. They have consciously omitted no detail which might now or hereafter, in our opinion, require legislation. They have sought to enact a complete code of laws and to mold with a single cast a system which would not only meet existing conditions, but be sufficient for all time. We believe that we should go only so far this time as experience has demonstrated would be safe and sound and that much danger is to be encountered by going beyond the point where experience and knowledge extend. In a question as great and broad as the vast field of transportation extreme caution should be used in dealing with the subject. We should legislate, not with a view to finality, but with a reservation to do only that which may be required by the present, and thus gain experience for future legislation of a more permanent nature. To do otherwise might work great harm and ultimate disaster.

POLICY OF BILL IS NOT MERELY TO PERMIT, BUT TO "ENCOURAGE" CONSOLIDATION

(2) Another fundamental fault with the bill is that it is written from the point of view that all consolidations are good and that all should be facilitated. The majority, in their report, frankly say:

> Argument is not necessary to support the soundness of the policy of encouraging and authorizing the unifications of railroads.

It is obvious, we submit, that unifications are not desirable merely as such, and that a consolidation or merger may be productive of great harm unless it is proper and desirable of itself and the public interest adequately safeguarded. We most emphatically dissent from the views of the majority when they say that consolidation, as such, should be encouraged. We do not believe that it should be the policy of Congress to invite and urge railroads to throw themselves at once into consolidated systems.

We believe that this invitation would be taken by the railroads throughout the country for them to hastily consolidate their properties. We are of the opinion that the passage of a law that only permits the unification of the railroads without the urge is all-sufficient and that consolidation and unification when they do come should be by a gradual and natural process. It is very much to be feared that with the passage of this bill there would be the most destructive riot of speculation in railroad securities that has ever been seen in the country. As evidence of the fact that enactment of this bill would have a tremendous influence in this direction, we have but to note the increased speculation in railroad stocks and the inflation in values since the vote of the committee to report this bill favorably.

Section 203 of the bill is too latitudinous in the grant of powers to the Interstate Commerce Commission. It clothes the commission with practically unlimited discretion in the allowance of unifications, which, in their opinion, may be in the public interest. The commission is not required to base their action upon a finding of fact, nor to form their opinion under the influence of any given set of principles. While the commission is directed to consider certain factors

in reaching their conclusion, the weight which shall be given to these factors is not prescribed, nor, indeed, is it made essential that any weight at all shall be given to any or all of them. Surely Congress should not delegate to the commission, which is merely its agency, such a generous share of its own responsibilities.

A BANKERS' BILL

(3) The bill is written more from the standpoint of railroad financiers and big bankers than that of railroad operators.

The existing law as found in paragraph 6 (b) of section 5 of the interstate commerce act is as follows:

> The bonds at par of the corporation which is to become the owner of the consolidated properties together with the outstanding stock at par of such corporation shall not exceed the value of the consolidated properties as allowed by the commission.

The bill sponsored by the majority repeals this provision. In the bill as first proposed in the committee a section similar to this was introduced but before the bill was reported it was stricken from the bill. Why, we ask. For more than 30 years many of the States have had laws forbidding a railroad corporation to have securities outstanding in excess of the value of the properties. No undue hardships have been worked on any railroad corporation. We believe that this provision should be restored to the law. There was a long fight waged in Congress before the commission was given the authority to forbid the issuance of spurious and unnecessary securities. Finally, section 20a of the interstate commerce act was passed, giving the commission full authority to approve or veto any application for issuance of securities. May we ask if this is not the entering wedge to defeat this very salient provision of the law which only demands that railroads shall hereafter be honestly capitalized? Why should a railroad company be permitted to issue stocks and bonds far in excess of the value of its properties? The railroads are glad indeed to have their rates set on value. Why are they not willing to have their capital based on value?

Without the repeal of this provision the commission would not have the power to allow the consolidated corporation to issue stocks and bonds in excess of the value of the properties. Will the commission take the repeal of this provision as consent of Congress for them to approve issuance of securities far in excess of the value of the properties?

In considering the proposed "Nickel Plate" consolidation the commission criticized the feature of the plan which placed control with promoters who might own less than a majority of the stock. This practice condemned in that case is legalized by the pending bill. It does not forbid the issuance of nonvoting stock, nor the control in numerous devious ways of the unified corporation by those who may own little or none of its securities. Our position is that sound public policy requires that responsibility for the control of a carrier should rest with those who own its securities, and that any different system encourages manipulation and sharp practice, harmful both to the public and to the interests of the corporation itself.

The bill does not forbid the practice of the new and ingenious device of financial manipulation in the issuance of nonpar value stock. We deem this harmful to the public as encouraging stock jobbing and speculation.

RUTHLESS VIOLATION OF STATES RIGHTS

(4) The bill, in our opinion, to the mind of any one who has any regard for the rights of States and their power to in any way control their own creatures, should appear insuperable in the fact that it provides for a ruthless disregard of all limitations placed upon corporations by the States under which they are organized.

Sections 210 and 211 of the bill clothe carrier corporations, created by the States, with vast Federal powers. The States, in the exercise of their reserved powers, have granted certain of their sovereign authority to carrier corporations. These creatures of the States have accepted their charter powers subject to strict limitations and under corresponding responsibilities.

For instance, in the case of Nebraska and numerous other States, a carrier corporation is not permitted to acquire a competing line, while in Texas, and probably other States, the corporation is not permitted to operate outside of the State. This bill strikes down these limitations, and allows these artificial creatures of the State to hold on to powers which were conferred upon them by the State, and to accept greater and additional powers from the Federal Government, though thereby the corporation may violate the laws of its creation. The Nebraska corporation is empowered by this bill, its charter limitation to the contrary notwithstanding, to acquire a competing line of railroad. The Texas corporation is empowered to operate in other States without regard to prohibitions of the Constitution and laws of Texas.

We believe that there has really rarely been in our history a more fundamental invasion of the rights of the States than as provided by this bill, i. e., the assumption by the Federal Government of the power to clothe State corporations with Federal power, and in so doing to strike down the limitations and restrictions provided by the State for the control of its creatures. It may well be doubted that the Federal Constitution permits Congress to clothe the corporation created by a State with powers inconsistent with the laws of the State which chartered it.

Another ruthless invasion of the reserved powers of the States is found in section 214 of the bill. That section undertakes to strike down their powers of taxation, to specify wherein and how they may be exercised.

Further the bill grants large and important Federal powers to to corporations, and this without requiring the beneficiary of congressional generosity to assume any corresponding burdens or responsibilities. In short, the corporations yield no consideration whatever in exchange for the new franchises and powers which are conferred upon them. The benefits conferred are in the form of a clean gift from Congress.

It is certain that the railroad corporations now enjoy various rights and powers which neither Congress nor the States which chartered them have power to take away. Experience and modern practice recognizes that certain of these powers exceed what the public interest requires that the corporation should have. These powers, now be-

come improper and excessive, the corporation should be required to surrender, as the price of availing themselves of the benefits conferred by this bill. For instance, the public interest seems to require that a carrier corporation should hold only such powers as are reasonably required to enable it to function as such. It should not engage in dealing in merchandise or real estate or in the banking business. It should be required to give up such powers as the consideration for consolidation or merger.

Carrier corporations might well be required, as the price for the benefits conferred by this bill, to accept the valuations of their property made by the Interstate Commerce Commission, or to surrender the right to have counted, as an element of value upon which they may earn a fair return, that part of the valuation upon rights of way and other real estate which may be in excess of their prudent investment in same.

The opportunity to require concessions from the railroad corporations, which Congress is yielding up by this bill, may not come again. The failure to take hold of it now may result not only in jeopardy of the public interest, but in serious legal difficulties in the future.

The objection to Federal charters for railroad corporations is based upon a regard for States rights. But for that principle, no doubt Federal charters would already have been conferred upon such corporations.

We therefore believe that this bill is destructive of competition between carriers in service, as it will allow the consolidation of the parallel and competing lines. For instance, the so-called Loree proposal, consolidating the Kansas City Southern, the Missouri, Kansas & Texas, and the Cotton Belt would, in our opinion, destroy practically every vestage of competition in the territory that they now serve. If those three railroads are consolidated what reason would there be for improving the service for the reason that they would get all of the business anyway by running trains either slow or fast?

We further call attention to paragraph 2 of section 210 of the bill which provides among other things that any common carrier and its officers, directors, agents and employees shall be relieved from the antitrust laws, from all restraints and prohibitions of the laws of the United States; and except in case of a corporate consolidation from all restraints and prohibitions of the laws or constitutions of any State or the desires or orders of any State authority, in so far as it may be necessary or appropriate to enable such carrier or its officers, directors, and agents to enter into and carry into effect such plans.

We feel that this is one of the most unjustifiable features of the bill in that it seeks to relieve the railroads and the commission from the operation of the antitrust laws by this provision, and any laws of any State or of the United States may be set aside and declared null and void in the discretion of the commission if the commission were of the opinion that it was necessary to do so in order to carry out its wishes with reference to unification. No such broad power should be granted by Congress to any man or set of men. To us it seems unthinkable that the Congress would say to any bureau or any commission that in carrying out some plan or some purpose that it be allowed to indiscriminately and at will set aside not only the specific law but all restraints and prohibitions of any law or laws of the United States.

SHORT-LINE RAILROADS

(5) In the beginning of the advocacy of railroad consolidation under the vast scope of this bill it was strongly urged in its favor that it would care for and take into the consolidated systems all weak or short lines. It is our opinion that the so-called weak and short lines are as vital to the communities that they serve as the trunk line is to the community served by it. We believe that these feeders and pioneers in the field of transportation should be preserved and fostered and that when consolidation does come and when application for consolidation is pending before the Interstate Commerce Commission that the railroads and the commission should be given to understand distinctly that it is our policy that these short and weak lines that are necessary and vital to the economic life of any community should be taken care of and the railroad management not allowed to consolidate only the properties of the rich, desirable railroads and leave these pioneer railroads to starve and become streaks of rust and these communities be destroyed. The owners of short-line railroads are hoping that they will be taken into these consolidated systems, but the testimony before the committee will not give much hope to their wish. One witness, representing one of the biggest groups in the country, in his testimony gave the committee to understand that if the Government wanted the short, weak, and unprofitable railroads to be taken care of, he desired the Government to do that itself. A weak railroad this year may be a strong, rich road next year, mines may be opened up along its way, oil fields may be developed, and ranches turned into farms. Therefore, we repeat, why the urge and undue haste for the consolidation of railroads when time and experience may develop wholly different conditions.

BILL FAVORS MAJORITY STOCKHOLDERS

(6) This is a majority stockholders' bill. While it enables a dissenting minority to obtain payment for their stock on a valuation, it deprives them of the power of veto. Minority stockholders who have acquired shares in a corporation, which, under its charter, had no power to merge with another corporation, will find that such powers are granted by this bill. It will be a great error to assume that the unification of two or more carriers will not be made in cases in which the control of all of the corporations is held by a single group of financiers, who will show little regard for the rights of the minority, and will be moved by selfish and unfair consideration to themselves.

HOPE OF REDUCTION IN RATES

(7) The President in his message to Congress at the beginning of this session stated that the "Purpose of consolidation is to increase the efficiency of transportation and decrease the cost to the shipper." Nowhere in the testimony of the railroad managers and experts who appeared before the committee is there held out the promise that rates and charges will be reduced because of consolidation. In the beginning of the discussion of the ambitious scope of this bill it was held out everywhere and at all times that in consolidation great economies would come about that would be reflected in the rate

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structure of the country. No testimony before the committee of the railroad managers or experts held out any promise or hope that there would be substantial, if any, reduction in rates, but all denied that freight-rate reduction would result from the operation of this bill. The economies in which the people are interested and the only one that they believe would be an economy is such economy that would be reflected in the reduction of rates. If this be true, then we ask what are the people to hope for from the passage of this bill? They may expect gigantic combinations of railroads and capital with all of its economic and political influence, with its menacing hazards, and its uncertain destiny. The measure is in line with the policy of government favored by those now in control with which we do not agree. The policy consists of abandoning, or to use a more euphonious term, delegating the real control and protection of the people's rights to this, that, and the other agency.

Before any more great grants of power are given to the commissions and bureaus of the Government it would be well to wait the outcome of the vast power we have already lodged in some of our bureaus and commissions.

We further believe that the Congress should firmly hold at all times to its rights to determine the policies of the Government and the policies and laws under which all of its creatures shall operate.

For these and many other reasons that we will later assert, we can not support the proposal.

SAM RAYBURN.
GEORGE HUDDLESTON.
TILMAN B. PARKS.
ROBERT CROSSER.
ASHTON C. SHALLENBERGER.
JACOB L. MILLIGAN.
GEORGE C. PEERY.

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Date Due

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U.S. Cong. House. Comm. on inter-state & for. comm. Railway consolidation bill. Report. 1928.

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